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INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
AFL-CIO



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March 4, 2002

VIA U.S. MAIL AND INTERNET FILING

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Docket No. FAA-2001-10999 - 45

Dear Sir or Madam:

This filing constitutes the comments of the International Brotherhood of Teamsters, Airline Division, regarding Docket No. FAA-2001-10999, Criminal History Records Checks. The IBT Airline Division represents airline workers in a number of crafts or classes, including pilots, flight attendants, mechanics and related employees, ramp workers, fleet and passenger service agents and culinary workers. We represent employees at major carriers, regional carriers and cargo carriers.

Our members are hard working and diligent employees proud of their work and mindful of the important role they play in assuring aviation security. These Teamsters are committed to providing the public with the safest and most secure air operations. Achieving that goal requires cooperation between carriers, airline personnel and the Federal Aviation Administration.

We have considered carefully the FAA's recently issued Notice, 66 FR 63474, setting forth its final proposed rule on Criminal History Records Checks for employees possessing unescorted access authority. As currently written, the proposed rule may well adversely affect workers who have demonstrated through their years of service that they can be trusted with access to air operations. The current rule also presents due process concerns and fails to adequately account for variation in state criminal laws. The rule should be revised to provide a mechanism for individual due process, which will ensure that hard working and loyal employees are not penalized merely because of a rules change.

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U.S. DEPARTMENT OF TRANSPORTATION

The IBT agrees with comments filed previously with the Department that application of the proposed rule to employees hired after its effective date is appropriate. However, the NPRM fails to provide adequate due process safeguards to individual employees, particularly, employees hired prior to the rule's effective date. Certain airline employees, including pilots, have already undergone background checks as part of their employment obligations. Moreover, these employees have demonstrated their loyalty and trustworthiness through years of active service. The IBT submits that application of the rule to these employees poses an unnecessary administrative burden and an unfair alteration of working conditions for employees who have invested years in their careers as airline employees.

The NPRM provides no mechanism for review of a purported disqualifying conviction to determine the circumstances associated with the event. In particular, the IBT is concerned that the current rule does not identify how charges which were dismissed will be treated. We believe that it fails to appreciate the fact that, by adopting criminal offenses which are predominantly the subject of state rather than federal authority, it has built into the rule substantial variation in how individuals will be treated. If the purpose of the rule is to establish uniformity in treatment of persons then the rule itself must establish a review mechanism to ensure such uniform treatment. As it stands, the rule relies only on the disposition of a charge imposed by a jurisdiction. This fails to recognize, however, that the various states have different, often significantly different procedures for disposing of the same offenses.

As an example, in the Washington, D.C. area, three different jurisdictions--the District of Columbia, State of Maryland and Commonwealth of Virginia--are within driving distance of three major airports: Washington-Reagan National, Dulles International and Baltimore-Washington International. Those jurisdictions, however, have different methods for handling criminal offenses where a court views probation or a suspended sentence to be appropriate.

In the District of Columbia, the jurisdiction may utilize a diversion program in which an offender is placed in treatment or probation without having to plead guilty to an offense. After satisfactory completion of the treatment or terms of probation the charge would be dismissed. The person's criminal record would reflect only an arrest and dismissal, but no conviction. The State of Maryland utilizes a similar mechanism in certain cases known as the "stet" docket, whereby an offense is placed on an inactive docket and may be dismissed after a certain period of time without an adjudication of guilt.

In the Commonwealth of Virginia, however, the jurisdiction does not permit a dismissal absent an adjudication of the person. While it does maintain a mechanism for dismissing charges after a successful period of probation, the individual's record will still reflect a disposition of guilt and a later dismissal. There may be no difference in the nature of the offense involved other than the particular jurisdiction in which the matter was disposed. Employees who work side by side at one of these airports may receive

different treatment under the proposed rule based not on the nature of the offense, but on where the matter was adjudicated. This potential for disparate treatment is inherent in a federal rule that incorporates state offenses.

To address this problem, the proposed rule should provide a mechanism for reviewing an employee's circumstances, including the nature and disposition of the offense involved and the employee's work record. The employee should be given an opportunity to demonstrate that he does not constitute a security risk and is fit to receive unescorted access. Also the rule should state clearly that charges which were dismissed do not constitute disqualifying offenses, regardless of whether that dismissal occurred prior to or after adjudication.

The proposed rule fails to identify whether disqualifying offenses are limited to felonies or include misdemeanor offenses. While the list of offenses provided in the rule implies that only felonies will constitute a disqualifying offense, this should be stated explicitly. Further, the rule should provide that where an employee was initially charged with a disqualifying offense, but was later found guilty of a lesser offense which is not included on the list of disqualifying offenses, the conviction will not constitute a disqualifying event.

Finally, the Department should give serious consideration to concerns raised by industry representatives that the proposed rule imposes too strict a timeline for its implementation by employers. The IBT is concerned that if the requisite background checks are performed in a hurried fashion or on an unnecessarily short timetable that errors will occur and employees will be denied an opportunity to respond to any findings presented by their employer. Employers should be given adequate time to implement the required changes in a prudent manner which safeguards the interests of employees as well as the public.

The IBT and its members strongly support efforts to ensure safe and secure air travel. We recognize the need to assure the public that air operations will be safeguarded against threats. We also strongly support the constitutional rights of due process and equal protection that make up the fundamental values which we all seek to defend. The proposed rule presented by the Department must safeguard these rights by not unfairly punishing workers who have worked hard and supported their country.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Benning". The signature is stylized with a large, looping "R" and a cursive "Benning".

Ray Benning
Director, Airline Division